IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No. 203 of 2001
Judgment reserved on: 21.7.2006

Date of Decision: July 25, 2006

Mangat Ram & ors …Petitioners.

Versus.

State of H.P. & ors. .. Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

Whether approved for Reporting?

For the Petitioner(s):	**Mr. Kuldip Singh Kanwar, Sr.Advocate with Mr. Karan Singh Kanwar, Advocate, for Petitioners 1 and 4 to 6.**
For the Respondent(s):	**Mr. M.S.Chandel, Advocate General with Mr.J.S.Guleria, Law Officer, for respondents 1, 2 & 5.** **Mr. Neel Kamal Sood, Advocate, for respondents 3 & 4.**

Deepak Gupta, J.

The petitioners along with one Yash Pal are owners of land measuring 132.15 biswas. According to them, they have purchased this land with the idea of planting apple orchard thereon. There are a number of trees on the land and before planting apple orchard, it was necessary to remove the trees.

The petitioners through their General Attorney accordingly applied for clear felling of trees on the land in question and the

permission was not granted by the State. Thereafter, the petitioners and said Yash Pal filed a CWP No.206 of 1990 in this Court which was disposed of by this Court with the following directions:-

> "Accordingly, we direct the respondents to accord sanction to the petitioners for clear felling of the trees within a period of one month from today after they are marked by the Forest Department. However, looking to the area involved, we would like that the petitioners should cover the area cleared by them on account of the felling of the trees by fruit trees immediately so that it does not suffer on account of soil erosion and environmental problems."

The State challenged the aforesaid orders by filing SLP(C) in the Supreme Court of India which was disposed of vide judgment reported in **State of H.P and others v. Mangat Ram and others,** 1995, AIR 665. The appeal was disposed of by the Apex Court in the following terms:-

> "17. We are unable to accept the contention of the learned counsel for the appellants that Rule 4(2) (e) of the Rules of 1983 will have any application to the facts of the present case. These Rules have no application to the lands in Theog Forest Division. That is why the respondents relied on the permission granted by the appellants in Balson Range for marking and felling of trees to many persons from the respective lands. Therefore, Rule 4(2)(e) cannot be pressed

into service. It is also not correct to contend that the respondents will have to wait to fell the trees in accordance with 10 years programme till 1999-2000. Merely because the application of the respondent was pending with the appellant, the respondents cannot be made to suffer. However, we make it clear that the respondents will have to conform to the order passed by the Secretary (Forests) to the Govt. of Himachal Pradesh in Order No. Fts(A) 3-1/81-Part II, Shimla-2, dated the Sept., 1984. It inter alia states:

"Provided also that any person felling the trees either for domestic or agricultural use or for sale shall be required to plant at least 3 trees for one tree felled. In case, however, a fruit orchard is planted in such area, it shall be planted according to the norms laid down by the State Horticulture Department for complete stocking of the area.

18. It is open to the appellant to prescribe such conditions as are permissible under the above proviso and all other regulations notifications governing the issue."

That after the aforesaid judgment of the apex Court, the respondents still did not grant permission to the petitioners to fell the trees and the petitioners filed Contempt Petition No. 7 of 1995. During the pendency of the Contempt Petition, the DFO, Theog granted permission to fell 1834 trees on 15.5.1996 (Annexure P-3) and permitted the petitioners to fell the aforesaid trees on the said land. Forest trade in H.P. is regulated and the timber can only be sold through H.P.State Forest Corporation. Accordingly, the trees were to

be taken over by the Forest Corporation and the trees were actually taken over by the forest corporation in September 1996. However, before the trees could be felled , the apex Court passed an order **in T.N.Godavarman Thirumulkpad v. Union of India and others**, 1997(2)SC 265 on 12.12.1996. By this order, the apex Court completely banned the felling of trees in any forest, public or private in the State of Himachal Pradesh. It would be pertinent to mention that in general direction No.5, the apex Court directed that each State Government would constitute Expert Committee within one month to:-

> "(i). Identify areas which are "forests", irrespective of whether they are so notified, recognized or classified under any law, and irrespective of the ownership of the land of such forest;
>
> (ii) Identify areas which were earlier forests but stand degraded, denuded or cleared; and
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> (iii) Identify areas covered by plantation trees belonging to the Government and those belonging to private persons."

In view of the orders in **Godavarman's** case (*supra*), the Contempt petition filed by the petitioners was disposed of in the following terms:-

> "The remedy of the petitioners, if at all, is to approach the Supreme Court in this matter. The petition is dismissed."

The petitioners challenged the judgment of this Court in the aforesaid Contempt petition by filing a SLP in the apex Court. This SLP was filed in the year 1997.

In the meantime, the petitioners kept representing to the respondents for payment of their dues on account of their taking over 1834 trees. Finally, the Divisional Manager of the H.P.State Forest Corporation- respondent No.4 on 27.12.2000 passed an order asking the Assistant Manager, Forest Unit, Theog to hand back the private sale lot taken -over by the Corporation to the General Attorney of the petitioners. The General Attorney objected that the possession of the trees which had been taken over should not be handed back to him. Thereafter respondent No.4 sent a letter dated 12.12.2001 asking the General Attorney to take over the possession of the aforesaid trees. The trees are still standing and have not been felled. Hence, the present petition.

The prayer of the petitioners is that the letters dated 27.12.2000 and 12.2.2001 whereby the trees were to be handed back to the petitioners should be quashed and a direction in the nature of writ of mandamus had been sought against the respondents to complete all legal requirements for felling of 1834 trees.

The respondents in their reply have taken a short objection. According to the respondents, in view of the judgment of the apex Court in **Godavarman's** case (*supra*), the trees in question cannot be permitted to be felled despite the earlier orders of the apex Court. It is further submitted that the appeal filed by the petitioners in the apex Court against the order passed in the Contempt petition has been dismissed by the apex Court in the following terms:-

> "Having heard the learned counsel for the parties, we are satisfied that in view of the fact and circumstances of the cases, inasmuch as the order passed by this Court on 12.12.1996, it cannot be said that the respondents had violated the order of this Court passed on 24.10.1994."

I have heard Shri Kuldip Singh Kanwar learned senior counsel for the petitioners, Shri M.S.Chandel, learned Advocate General for the State and Shri Neel Kamal Sood, learned counsel for the Forest Corporation.

Shri Kuldip Singh Kanwar has submitted that the judgment in **Godavarman's** case (*supra)* will not affect the rights of his clients since the apex Court in the petitioners' case had earlier passed a judgment dismissing the appeal filed by the State of Himachal Pradesh. According to him, the bar to felling the trees will not apply in cases where a decision has already been taken by the apex Court permitting such felling of trees. He submits that even otherwise, the case of the petitioners falls out-side the ambit of the order in

Godavarman's case, since in the case, the land in question as per revenue record is depicted as "Ghasani" land and is not forest land. He further submits that the recommendations of the Committee relied upon by the respondents have not been accepted by the apex Court or by the State and as such cannot be enforced.

On the other hand Shri M.S.Chandel, learned Advocate General submits that consequent upon the direction of the apex Court to set up Expert Committee to identify areas which are "forest" irrespective of whether they are so notified, recognized or classified under any law, and irrespective of the ownership of the land of such forest. The Committee made the following recommendations with regard to private land :-

> " As the private lands be considered as forests under private ownership, it was decided that a compact block of wooded land above 5 ha. in extent will be "forest" for the purpose of forest (Conservation) Act, 1980."

According to the respondents, the land of the petitioners is about 10 hectares and is one compact block of land which is heavily wooded and as such the same falls within the definition of "forest" as recommended by the Committee. It is further submitted this report has been submitted to the apex Court and it is under these circumstances that the State Government has not granted permission to fell trees.

After hearing learned counsel for the parties and going through the entire record, I feel that it would not be appropriate for this Court to issue any directions or give any findings in the present case. The entire dispute revolves around the interpretation to be given to the orders of the apex Court. The report of the Committee has also been placed before the apex Court. In case the apex Court accepts the report of the Committee then obviously the trees cannot be permitted to be felled. There is no material on record to show whether the report has been accepted or rejected by the apex Court. The appeal arising out of contempt matter has also been dismissed by the apex Court by giving aforesaid directions. It would not be out of place to mention that when the appeal arising out of contempt matter was disposed of by the apex Court apparently, the petitioners did not bring it to the notice of the apex Court that the present writ petition is pending before this Court.

In view of the fact that the whole dispute revolves around the question relating to felling of trees which is under the active consideration of the apex Court in **Godavarman's** case (*supra),* in which case the apex Court had ordered that no Court should allow felling of trees, it would not be appropriate for this Court to express any opinion in the matter. The remedy of the petitioners, if any, is to approach the Supreme Court of India.

The writ petition is, therefore, disposed of in the aforesaid terms.

July 25, 2006 (Deepak Gupta),
s. Judge.